

Remarks:

Applicant has carefully studied the final Examiner's Action mailed 04/17/2007, having a shortened statutory period for response set to expire 07/17/2007, and all references cited therein. The amendment appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

Applicant responds to the outstanding Action by centered headings and numbered paragraphs that correspond to the centered headings and paragraph numbering employed by the Office, to ensure full response on the merits to each finding of the Office.

DETAILED ACTION

Applicant acknowledges that the text of Title 35, U.S. Code not included in the outstanding action can be found in a prior office action.

Applicant acknowledges the new grounds of rejection and further that the outstanding action is a final rejection. A Request For Continuing Examination is enclosed herewith as a separate paper.

Claim Rejections – 35 U.S.C. § 103

1. Applicant acknowledges the quotation of 35 U.S.C. § 103(a).
2. Applicant acknowledges the summary of *Graham V. John Deere Co.*
3. Claims 1, 5 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mercereau. Reconsideration and withdrawal of this ground of rejection is requested in view of the amendment made to claim 1, for the following reasons.

Applicant does not traverse the Office's finding that the preamble of claim 1 is not a claim limitation. Accordingly, devices having the same or substantially the same structure as recited in claim 1, as currently amended, are infringements of said claim without regard to the use to which such structures are put. Moreover, a mere statement of intended use carries no patentable weight whether included in a preamble of a claim or a body of a claim when such claim recites a structurally complete invention.

Claim 1, as currently amended, is not suggested by Mercereau because Mercereau teaches that basket 16 is collapsed in two of the three dimensions when it is fully retracted into sheath 14. Basket 16 is not collapsed in the length dimension, *i.e.*, it has the same length whether

extended or retracted. However, basket 16 is collapsed in the width dimension and it is collapsed in the height or depth dimension when retracted into the lumen of sheath 14.

This is in sharp and distinct contrast to Applicant's net 22 which, like Mercereau's basket, has the same length whether retracted or extended and which, like Mercereau, is collapsed in the width direction when retracted, but which is never contracted or collapsed in the height or depth dimension.

More succinctly, Mercereau's basket 16 is collapsed in two of the three dimensions when retracted into the lumen of sheath 14 and thus must expand in two of three dimensions when deployed. Applicant's net 22 is collapsed in only one of the three dimensions when retracted and thus must expand in only one dimension when deployed. This cuts the chances for a mechanical malfunction in half. It also places less stress on the mechanisms involved in retraction because less stress is involved in compressing an object from three to two dimensions than from three to one.

Applicant, not Mercereau, has taught the art a system having but one dimension of collapse and thus enhanced operational reliability.

As indicated in Figs. 16 and 33 of Mercereau, basket 16 is fully housed within the lumen of sheath 14 when slide assembly 18 is in its fully retracted position, and is therefore collapsed in its width and depth dimensions. In sharp contrast, Applicant's foreign body capturing means is not fully housed within Applicant's elongate base member when said foreign body capturing means is fully retracted. As disclosed in [Para 37], [Para 38], and [Para 39] of Applicant's specification:

As best understood in connection with Figs. 4-7, net 22 is not fully housed within elongate bore 14 when handle 18 is in its fully retracted position. More particularly, Figs. 4, 6, and 7 depict slot 32 which is truncate in extent relative to the extent of elongate slot 26. Truncate slot 32 is formed in bottom wall 34 of elongate base 12, is parallel to elongate bore 14, and is in open communication with the leading half, approximately, of said elongate bore 18. Thus, as indicated in Figs. 6 and 7, the main body of net 22 depends from rim 20 even when rim 20 is fully retracted within elongate bore 18 and the lower end of the main body of the net extends below said bottom wall 34.

In this illustrative embodiment, the width of truncate slot 32 is greater than the width of elongate slot 26 but less than the width of elongate bore 14. This difference in widths creates a shoulder that

retains rim 20 within elongate bore 14 when handle 18 is in its fully retracted configuration.

Net 22 is formed of a flexible material such as an elastic fabric that remains firmly attached to rim 20 as said rim changes from a substantially linear shape to that of a circle or ellipse and from said circular or elliptical shape back to said substantially linear shape as handle 18 is extended and retracted, respectively.

Mercereau's slot 26 is somewhat suggestive of Applicant's slot 26 and Mercereau's slide assembly 18 is somewhat suggestive of Applicant's control member 24. The unnumbered lumen of Mercereau is remotely suggestive, at best, of Applicant's elongate bore 14. However, no structure of Mercereau anticipates or suggests Applicant's truncate slot 32 formed in the bottom wall of elongate base 12 and which is in open communication with the leading half of elongate bore 14. Mercereau does not anticipate or suggest the width of said truncate slot which is less than a width of the elongate bore so that a rim-supporting ledge is formed where the elongate bore and truncate slot meet. Nor does Mercereau anticipate or suggest the net that depends from said rim extending to a point below bottom wall 34 of elongate base 12 when said net is fully retracted. Although the specification does not expressly recite the reason for the hanging of the bottom of the net below bottom wall 34 of elongate base 12 when said net is fully retracted, it is inherent in the structure that the reason for such non-restraint of the net is to facilitate the full and complete opening of the net as it is advanced out of elongate base 12. A net that is fully retracted within a lumen of sheath 14 of Mercereau may remain folded when freed from said cavity and may fail to fully deploy. Applicant solves this problem by providing a unique open-bottomed truncate slot that allows the bottom of the net to hang freely at all times so that the only net-opening required is the lateral opening of the rim of the net as it exits the elongate bore. In this way, opening in the height or depth dimension is not required. This clearly distinguishes the claimed invention over Mercereau. The final paragraph of claim 1 has therefore been amended to carefully point out that Applicant's net is fully extended not only when fully retracted into its truncate slot but also when fully extended therefrom or in any position therebetween. This clearly distinguishes over the Mercereau basket 16 which is fully extended only when it is not housed within the lumen of sheath 14.

Thus it matters not whether or not Mercereau's slot has a width less than the width of Mercereau's bore because Mercereau's basket 16 is collapsed in two dimensions when retracted

into the lumen of sheath 14. This is the important structural feature that distinguishes the Mercereau basket 16 from Applicant's net 22 because the latter never undergoes a two dimensional folding. Thus, whether or not the two structures differ only by a mere change in size of bores is not relevant to the patentability of Applicant's structure because Mercereau's basket 16 is never withdrawn into the bore occupied by slide assembly 18; it is withdrawn only into the lumen of sheath 14 as aforesaid.

The Office further contends that Mercereau also discloses a truncated slot 30 formed in the bottom wall of the elongate base. However, Applicant's truncate slot accommodates net 22 so that said net need not be collapsed in its height or depth dimension when retracted into said truncate slot. Slot 30 of Mercereau performs no such function because, as has already been pointed out, basket 16, when retracted, is collapsed in two dimensions so that it can enter into the lumen of sheath 14. This renders the equivalence or lack of equivalence of the truncate slots of Applicant and Mercereau irrelevant. The cylindrical lumen of sheath 14 which forces basket 16 to collapse in two dimensions cannot possibly suggest Applicant's truncate slot that avoids collapse of net 22 in the height or depth dimension.

Nor is the Office on solid logical ground in contending that it would have been obvious to cause Mercereau's basket 16 "to extend below the base." Such would require excision of sheath 14 from Mercereau's apparatus because said sheath clearly houses said basket and prevents its extension below the base when said basket is retracted. Removal of sheath 14 would require a major re-designing of the Mercereau apparatus and obviously such re-designing would have to use Applicant's structure as a guide book.

As to the allowability of claims 5 and 6, Applicant relies upon their dependence from claim 1, currently amended.

4. Claims 7 and 8 stand rejected as being unpatentable over Mercereau and Sabet. For the allowability of claims 7 and 8, Applicant relies upon their dependence from claim 1, currently amended.

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Applicant thanks the Office for astutely citing the Mercereau reference because said citation, as intended, has given Applicant the opportunity to address and distinguish it, thereby strengthening the presumption of validity of the patent to be awarded.

Conclusion

If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (813) 925-8505 is requested. Applicant thanks the Office for its careful examination of this important patent application.

Very respectfully,

SMITH & HOPEN

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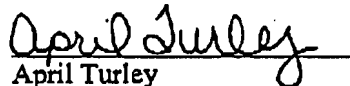
Dated: May 14, 2007

pc: University of South Florida

CERTIFICATE OF FACSIMILE TRANSMISSION
(37 C.F.R. 1.8)

I HEREBY CERTIFY that this Amendment AF, including Introductory Comments, Amendments to the Claims, and Request For Continuing Examination, is being transmitted by facsimile to the United States Patent and Trademark Office, Art Unit 3731, Attn: Amy T. Lang, (571) 271-8300, on May 14, 2007.

Dated: May 14, 2007


April Turley